

REMARKS:

SUMMARY OF THE OFFICE ACTION AND THIS RESPONSE

In the outstanding Office Action, Claims 1-5, 8-9, 11-12, 14-20, 24, 26-27, 35-37, and 39-42 were rejected only under 35 U.S.C. 102(e) as being anticipated by US Patent 6,556,741 to Fan.

5 Further, claims 10 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan as applied to claims 1 and 24, and further in view of U.S. Patent No. 6,195,478 to Fouquet. The Applicant respectfully traverses these grounds of rejection as set forth below.

INFORMATION DISCLOSURE STATEMENT DATED SEPTEMBER 26, 2001

The Applicant submitted an information disclosure statement (IDS) on September 26, 2001.

10 Although the Examiner has considered two other IDS's filed November 25, 2002 and March 27, 2003, the September 26, 2001 IDS was not considered. The Applicant submits that the IDS was timely submitted and that no fee is due. As proof that the IDS was submitted to and received by the USPTO, the Applicant submits herewith copies of the IDS, transmittal, Express Mail label, and return receipt postcard with a USPTO date stamp.

15 **ABSTRACT AMENDMENT**

Per Examiner's request, the abstract of the disclosure has been amended to a length of fewer than 150 words. The Applicant submits that no new matter has been entered with this amendment.

CLAIM AMMENDMENTS

20 Claim 11 has been amended to correct a spelling error. Claims 10, 24 and 35 have been amended to correct grammatical and typographical errors. The Applicant submits that these amendments merely make explicit that which was implicit in claims 10, 11, 24 and 35 as originally filed. As such these amendments do not narrow the scope of any limitation or element of claim 10, 11, 24 or 35 within the meaning of the decision in *Festo Corp. v. Shoketsu Kogyo Kabushiki Co., Ltd.*, 234 F3d 558, 566, 56 U.S.P.Q.2d 1865 (Fed. Cir. 2000) 535 U.S. 722, 152 L. Ed. 2d 944, 122 S.
25 Ct. 1831, (2002).

CLAIM REJECTIONS UNDER 35 USC 102(e)

The Examiner has rejected claims 1-5, 8-9, 11-12, 24, 26-27, 35-37, and 39-42 under 35 USC 102(e) as being anticipated by US Patent 6,556,741 to Fan. In response, the Applicant submits that the matter in the above claims is in fact inventive and is not anticipated by Fan.

- 5 While Fan does describe a MEMS element comprising a crystalline substrate (302) and a moveable element (330) attached to the substrate having a perpendicular portion (360), Fan does not specify that the crystal structure of the perpendicular portion is substantially the same as the crystal structure of the substrate or that the crystal axes of the moveable element ever align in any way to the crystal axes of the substrate, as stated in claims 1, 24, and 35.
- 10 Furthermore, Fan specifically describes components of the switch (300), including the perpendicular portion (360) of the moveable element (330), as being made of a **polycrystalline**, material such as polycrystalline silicon (col. 5 lines 27-30), not a single-crystalline material. A polycrystalline material is composed of thousands of micrometer-sized grains having different crystal orientations. Therefore, polycrystalline materials cannot be characterized by two or more
- 15 crystal axes. In addition, a polycrystalline structure can never be said to have the same crystal structure as or have its crystal axes aligned with either a single crystal or a polycrystalline substrate.

In addition, since claim 24 describes the perpendicular portion being formed from the material of the substrate, thereby describing the same matter as that outlined in claim 6, which the Examiner

20 allowed.

In view of the above, we submit that claims 1, 24, and 35 are allowable over Fan, and by extension dependent claims 4-5, 8-9, 11-12, 14-20, 26-27, 36-37, and 39-42 are allowable since they are dependent on claims 1, 24, or 35 and recite additional features therefor.

CLAIM REJECTIONS UNDER 35 USC 103(a)

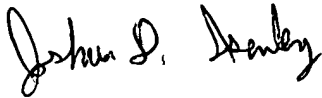
- 25 The Examiner has rejected claims 10 and 28 under 35 USC 103(a) as being unpatentable over Fan as applied to claims 1 and 24, and further in view of U.S. Patent 6,195,478 to Fouquet. In

response, the Applicant submits that the matter in the above claims is patentable, for the same reasons that claims 1 and 24 are allowable, as described above.

CONCLUSION

For the reasons set forth above, the Applicant submits that all claims are allowable over the cited art and define an invention suitable for patent protection. The Applicants therefore respectfully request that the Examiner enter the amendment, reconsider the application, and issue a Notice of Allowance in the next Office Action. In addition, the Applicant respectfully requests that the Examiner consider the September 26, 2001 IDS and make it of record in the application.

Respectfully submitted,



Joshua D. Isenberg
Reg. No. 41,088
Patent Attorney

Date: Feb. 20, 2004

JDI PATENT
204 Castro Lane
Fremont, CA 94539
tel.: (510) 896-8328
fax.: (510) 360-9656